

UNITED STATES OF AMERICA  
BEFORE THE NATIONAL LABOR RELATIONS BOARD

CON-WAY FREIGHT INC.

and

Case 21-CA-135683

JAIME ROMERO, an Individual

CON-WAY FREIGHT INC.

and

Case 21-CA-140545

JUAN PLACENCIA, an Individual

CON-WAY FREIGHT INC.

Employer

and

Case 21-RC-136546

INTERNATIONAL BROTHERHOOD OF  
TEAMSTERS, LOCAL 63

Petitioner

**RESPONDENT/EMPLOYER'S REPLY BRIEF IN RESPONSE TO  
PETITIONER TEAMSTERS LOCAL 63'S ANSWERING BRIEF**

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## **I. INTRODUCTION**

Respondent Con-way Freight Inc.'s Brief in Support of its Exceptions to the Administrative Law Judge's Decision shows that the ALJ erred in failing to find that the election conducted in Case 21-RC-136546 should be set aside based upon Respondent's Objections to the election. The Answering Brief filed by Petitioner Teamsters Local 63 ("Union") fails to rebut Con-way's arguments. As Con-way's Supporting Brief fully addresses the arguments raised by the Union in its Answering Brief regarding the intimidating messages placed on the "Change Conway to Win" website and the intimidating calls received by eligible voter Ramsey Robles, this Reply Brief will address the Juan Placencia knife brandishing incident, the dissemination of that incident to eligible voters and the effect of this incident and its dissemination on the election.

## **II. ARGUMENT**

### **A. The ALJ's Findings And Conclusion That Juan Placencia Did Not Brandish A Knife At Labor Consultant Luis Camarena In A Threatening Manner Are Clearly Erroneous**

In its Supporting Brief, Con-way explains in great detail how the clear preponderance of the evidence shows the ALJ's findings and conclusion that Union organizing committee member Juan Placencia did not brandish his knife at Labor Consultant Luis Camarena in a threatening manner are clearly erroneous. As discussed at length in Con-way's Supporting Brief (pp. 29-34, 62-64), there are numerous material, substantial, and fundamental contradictions in the testimony of Placencia, and his two former coworkers, John Cabrera and Sal Navarro. Among other things, their version of the events vary significantly as to their respective locations in the break room and dispatch office during the October 7, 2014 incident, what they each were doing at the time, in which hand was Placencia holding his knife, and which other employees were present in the

break room during the incident.<sup>1</sup> These contradictions clearly underscore that Placencia, Cabrera, and Navarro completely fabricated their testimony. Moreover, contrary to the ALJ's finding, as members of the employee Union organizing committee, Cabrera and Navarro have a stake in the outcome of Placencia's case and the union election and were not "disinterested" witnesses. Also, two ULX employees, Gerardo Lopez and Victor Cruz, testified at the hearing that Cabrera told them Placencia had exposed his knife to Camarena *with the blade open, not closed*, and Navarro's testimony that the two LAPD police officers followed ULX Service Center Manager Paul Styers out of the facility to confront Placencia at the shopping center where Placencia had stopped is flatly contradicted by Officer Lagac himself and Styers, who both testified that the LAPD Officers left ULX before Styers. It is further telling that the ALJ discredited Placencia's testimony regarding his meeting with the two labor consultants (Camarena and Edward Echanique) on about September 23, 2014, in which he claimed they had threatened loss of wages and benefits and futility of collective bargaining, and the portion of his conversation with Camarena on the evening of October 6, 2014 in which Placencia again claimed that Camarena threatened futility of collective bargaining.

As further discussed in Con-way's Supporting Brief (*Id.*), the differences between Camarena's and Freight Operations Supervisor Steve Roman's testimony relied upon by the ALJ to discredit their version of the events were minor and immaterial, and they credibly reported and testified no one else was in the break room or the dispatch office besides Camarena, Roman, and Placencia at the time of the incident. Moreover, there is no dispute Placencia held a knife in his

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<sup>1</sup> Indeed, as just one of several glaring examples, the record testimony clearly shows Cabrera and Navarro placed Placencia in front of the left dispatch office window, where Camarena was standing and Roman was sitting, and Cabrera in front of the dispatch office window to Placencia's right. (Tr. 527, 691-692) Yet, Placencia contradicts them both by placing himself at the break room table located 10 to 15 feet away from and sideways to the dispatch counter and by placing Cabrera sitting on top of the table. (Tr. 220, 223, 225, 458-459, 464-465)

hand during the incident. For Camarena's statement, "That's not a knife, this is knife," and accompanying gesture mimicking the knife-brandishing scene in *Crocodile Dundee* to make any sense at all, the knife in Placencia's hand had to be open with the blade exposed just like in the scene from the movie.

**B. The Knife Brandishing Incident Was Widely Disseminated Among The Eligible Voters Within The Two-Week Period Before The Election**

As discussed in Con-way's Supporting Brief (pp. 68-71), the record evidence clearly establishes that the October 7, 2014 knife brandishing incident was widely disseminated among the eligible voters within the two-week period before the October 23, 2014 election. Employee witnesses and eligible voters Gerardo Lopez, Ramsey Robles, Clemente Fuentes Jr., Leonard Loya, Mario Cruz, and Victor Cruz all testified to this. It is not surprising that the knife brandishing incident became well-known among the eligible voters, as the voting unit only consisted of 42 drivers who all work out of and report every workday to the same location.

Moreover, contrary to the Union's argument, the fact that eligible voters were not present in the break room or dispatch office at the time of the incident or that Placencia's threat was not directed against an employee is of no import in this case. It is well-established that threats directed at management representatives, supervisors or agents under circumstances where, as here, it is reasonably foreseeable employees would hear of it are violative of the Act. *See, e.g., SEIU District 1199 (Staten Island University Hospital)*, 339 NLRB 1059, 1061 (2003); *Local 140, United Furniture Workers (Brooklyn Spring Corp.)*, 113 NLRB 815, 822 (1955).

**C. The Closeness Of The Election Dictates The Election Should Be Set Aside**

In its Answering Brief, the Union ignores the fact that the election outcome in this case was extremely close, 22 to 20 in favor of union representation. A change in just one vote would have altered the election result. Regardless of which test the Board applies in this case, the party

test on the basis that Placencia, as an active member of the Union's employee organizing committee, was acting in his capacity as an agent of the Union, or the Board's third party test, the election must be set aside.

### III. CONCLUSION

For the reasons stated in Con-way's Exceptions, Supporting Brief and this Reply Brief, the election result should be set aside based on the proven objectionable conduct, and a rerun election ordered.

Dated: April 4, 2016

Respectfully submitted,

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**CERTIFICATE OF SERVICE**

I hereby certify that, on this 4th day of April 2016, I e-filed the attached Respondent/Employer's Reply Brief in Response to Petitioner Teamsters Local 63's Answering Brief with the Office of the Executive Secretary of the NLRB on the NLRB's E-Filing system, and served a copy of this Reply Brief by electronic mail upon the following:

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